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phone conference

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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MICHAEL SPIEGEL,

Plaintiff,

v.

14 Civ. 3045 (LGS)

ERIN BEKOWIES, et al.,

Defendants.

-----x

New York, N.Y.  
January 28, 2015  
11:15 a.m.

Before:

HON. LORNA G. SCHOFIELD,

District Judge

APPEARANCES

MICHAEL SPIEGEL, Pro se

GREENWALD DOHERTY, LLP

Attorneys for Defendants

BY: CAROLYN J. GRIMALDI

F1S5spiC

phone conference

1 (Case called)

2 THE COURT: Good morning.

3 MS. GRIMALDI: Good morning, your Honor.

4 THE COURT: Good morning.

5 MR. SPIEGEL: Good morning, your Honor.

6 THE COURT: I know that I have referred this case for  
7 general pretrial supervision to Judge Maas but there are a  
8 couple of matters that remain before me and one is the  
9 plaintiff's motion to remand. I thought the most efficient way  
10 to deal with that is to get you on the phone and tell you what  
11 must ruling is. So, that is what I plan to do today. For the  
12 following reasons, plaintiff's motion to remand is denied:

13 This action arises out of plaintiff's employment at  
14 the Hotel Edison in Manhattan. As you know, defendants are all  
15 individuals who worked with plaintiff at the hotel. Subject to  
16 an industry-wide collective bargaining agreement, plaintiff  
17 joined the hotel union -- the New York Hotel and Motor Trades  
18 Council. The amended complaint alleges three claims against  
19 the defendants: First, tortious interference with contract;  
20 second, tortious interference with business relations; and  
21 third, tortious interference with prospective business  
22 advantage.

23 To remove a case from state court to federal court, a  
24 party need only demonstrate "reasonable probability that  
25 removal is proper." Anwar v. Fairfield Greenwich Ltd., 676

F1S5spiC

phone conference

1 F.Supp.2d 285, 292.

2 MS. GRIMALDI: Your Honor, I don't mean to interrupt  
3 but I don't know if Mr. Spiegel you are getting the same effect  
4 but you are cutting in and out in between.

5 MR. SPIEGEL: I can't understand everything you are  
6 saying but I am assuming you putting it in writing.

7 THE COURT: No, I'm not, but there is a court reporter  
8 here so there will be a written transcript of it.

9 MR. SPIEGEL: In that case, your Honor, I'm not -- I  
10 get the general --

11 THE COURT: Yes, and I apologize about the phone. Let  
12 me pick it up.

13 (Judge using phone handset)

14 THE COURT: Is everyone there? Okay, so this proves  
15 the problem is not with my phone because I have the handset in  
16 my hand and it is still clicking in and out.

17 Is anyone on a cell phone?

18 Do you want to call in to my chambers again and we  
19 will see if a new connection makes it any better? Why don't  
20 you try to call in again. I am going to hang up. Call in  
21 again.

22 (Call terminated)

23 THE COURT: So, we are back on the record. I think I  
24 was in the middle of a citation.

25 MS. GRIMALDI: Yes.

FlS5spiC

phone conference

1 THE COURT: 676 F.Supp.2d 285, 292, (S.D.N.Y. 2009)  
2 (citing Blockbuster, Inc. v. Galeno, 472 F.3d 53, 58 (2d Cir.  
3 2006)). "Although the Supreme Court repeated that the party  
4 who brings the suit is master to decide what law he will rely  
5 upon, it is an independent corollary of the well-pleaded  
6 complaint rule that a plaintiff may not defeat removal by  
7 omitting to plead necessary federal questions in a" --

8 MR. SPIEGEL: Your Honor, the same problem is going  
9 on. You are going in and out.

10 THE COURT: Well, I am going to forge forward then.

11 MR. SPIEGEL: All right.

12 THE COURT: And there will be a written transcript.

13 MR. SPIEGEL: Oh good. Good. Thanks.

14 THE COURT: And I will just do my best --

15 -- "so that a plaintiff may not defeat removal by  
16 omitting to plead necessary federal questions in a complaint.  
17 Citing Franchise Tax Board of State of California v.  
18 Construction Laborers Vacation Trust for State of California,  
19 463 U.S. 1, 22 (1983). "Once an area of state law has been  
20 completely preempted, any claim purportedly based on that  
21 preempted state law is considered, from its inception, a  
22 federal claim, and therefore arises under federal law."  
23 Caterpillar Inc. v. Williams, 482 U.S. 386, 393 (1987).

24 "If even one claim is subject to the complete  
25 preemption doctrine, then federal jurisdiction exists over that

F1S5spiC

phone conference

1 claim, supplemental jurisdiction exists over the others (unless  
2 those claims substantially predominate over the claim or claims  
3 over which the District Court has original jurisdiction,' 28  
4 U.S.C. Section 1367(c)(2)), and the case may remain in federal  
5 court." *Meier v Premiere Wine and Spirits, Inc.*, 371 F.Supp.2d  
6 239, 245-246 (E.D.N.Y. 2005). "The complete preemption  
7 corollary to the well-pleaded complaint rule is applied  
8 primarily in cases raising claims preempted by Section 301 of  
9 the Labor Management Relations Act." *Caterpillar*, 482 U.S. at  
10 393.

11 Here, plaintiff has styled his complaint to raise  
12 claims under state law. However, at a minimum, plaintiff's  
13 tortious interference with contracts claims are subject to  
14 preemption under Section 301. The basis for these claims is  
15 the contract between that union and Hotel Edison, meaning the  
16 collective bargaining agreement. The Second Circuit has held  
17 that interpretations of collective bargaining agreements are  
18 subject to complete preemption by Section 301. See *Vera v.*  
19 *Saks & Co.*, 335 F.3d 109, 115 (2d Cir. 2003). Federal  
20 jurisdiction is therefore proper in this action for all claims  
21 and plaintiff's addition of four new defendants does not alter  
22 that conclusion.

23 So, for those reasons, plaintiff's motion to remand is  
24 denied and I will close the open motion at docket no. 9.

25 So, I know that I had previously ruled docket no. 38,

F1S5spiC

phone conference

1 that motions to dismiss, if any, would be due 30 days from the  
2 ruling that I just made. Is it the defendant's intention still  
3 to file a motion to dismiss? Or have you passed that thought?

4 MS. GRIMALDI: Yes, your Honor, it is still  
5 defendant's intention to. The timing of this decision  
6 unfortunately coincides with my leaving for vacation so I was  
7 hoping to get a little more than 30 days to draft the motion  
8 and get it filed. I am going to be leaving for vacation on  
9 Thursday of next week and I will not return until the 24th, so  
10 I was hoping to get until March 3rd to submit defendant's  
11 motion to dismiss.

12 THE COURT: Okay, so March 3rd we will accept the  
13 motion defendant's motion to dismiss.

14 Mr. Spiegel, I understand you are pro se; how long  
15 would you like to respond?

16 MR. SPIEGEL: 30 days, your Honor.

17 THE COURT: Okay. So that is April 3rd.

18 And then one week for reply?

19 MS. GRIMALDI: That's fine.

20 THE COURT: Okay. I probably will not have oral  
21 argument on the motion but if I change my mind, I will let you  
22 know, and the requirements for motion papers are set forth in  
23 my individual rules which are online at the Court website.

24 MS. GRIMALDI: Okay.

25 THE COURT: So, if you could take a look at those?

F1S5spiC

phone conference

1 MR. SPIEGEL: Judge?

2 THE COURT: Yes.

3 MR. SPIEGEL: May I ask a couple of questions, your  
4 Honor?

5 THE COURT: Of course.

6 MR. SPIEGEL: First, will you be sending a transcript  
7 of this because, again, you were going in and out and I would  
8 like to see it in writing.

9 THE COURT: I'm not sure how that works with pro se  
10 parties. Normally a party has to buy a transcript so I don't  
11 think there will be a transcript to send out unless you  
12 purchase it.

13 MR. SPIEGEL: Okay. But it is available?

14 THE COURT: Yes, it will be transcribed. Actually,  
15 the court reporter is here, if you would like to make  
16 arrangements to do that.

17 MR. SPIEGEL: Yeah, after. In a moment I will speak  
18 with him and get details about that.

19 THE COURT: She is a she, but once we are finished I  
20 will put her on the phone.

21 MR. SPIEGEL: Okay.

22 THE COURT: Any other questions?

23 MR. SPIEGEL: Yes.

24 As you are aware, your Honor, you ordered a conference  
25 with Judge Maas and he scheduled it for February 11th, to

F1S5spiC

phone conference

1 discuss discovery. Under these circumstances, is that still  
2 going to happen?

3 THE COURT: Yes. So, the case simply goes forward in  
4 federal court and everything goes in front of Judge Maas except  
5 motions that would end the case, basically. So, the motion to  
6 dismiss comes to me but basically everything else until the  
7 very end of the case goes to Judge Maas.

8 MR. SPIEGEL: So are you saying, your Honor, that  
9 discovery will continue during the period of time that you will  
10 be deciding the motion to dismiss?

11 THE COURT: Yes.

12 MR. SPIEGEL: All right.

13 THE COURT: Thank you very much, counsel.

14 MS. GRIMALDI: Thank you, your Honor.

15 MR. SPIEGEL: And may I speak with the clerk, please?

16 THE COURT: I will let you talk to the court reporter  
17 right now.

18 MR. SPIEGEL: Thank you.

19 THE COURT: So, we are adjourned. Thanks.

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